



US Army Corps  
of Engineers

# Construction Bulletin

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## CEMP-C

**Subject:** Use and Administration of the Variations in Estimated Quantities Clauses (FAR and EFARS)

**Applicability:** GUIDANCE

**1. PURPOSE.** This Construction Bulletin (CB) is an update and a reissue of CB No. 94-7 dated 25 March 1994, subject as above. It provides guidance on the proper use and administration of the standard Federal Acquisition Regulation (FAR) clause "Variations in Estimated Quantities" (VEQ) and the Engineer Federal Acquisition Regulation Supplement (EFARS) "Variations in Estimated Quantities - Subdivided Items" clause.

## **2. BACKGROUND.**

**a.** The standard FAR VEQ clause is inserted in solicitations and contracts when a fixed-price construction contract is contemplated that includes estimated quantities for unit-priced items. The clause was intended to facilitate the implementation of an equitable adjustment in the contract price upon demand of either the Government or the contractor when the variation between the estimated quantity and the actual quantity of a unit-priced item is more than plus or minus 15 percent (refer to CB No. 96-21 dated 10/21/96 for further guidance).

**b.** The EFARS VEQ clause is structured such that the first sub-item will reflect the minimum quantity of work that can be expected to be accomplished under the item and the follow on sub-item(s) will reflect additional increments of work sufficient to include the total quantity reasonably anticipated. The variation (increase or decrease) from the estimated quantity in the actual work performed under any second or subsequent sub-items(s) or elimination of all work under a second or subsequent sub-item will not be the basis for an adjustment in contract unit price under the EFARS VEQ clause. An

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equitable adjustment in price is only made if the actual quantity of work performed is less than 85 percent of the quantity of the first sub-item. The following is a sample of a bid schedule that includes estimated quantities with undivided and subdivided items:

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>QTY.</u>	<u>UNIT</u>	<u>UNIT PRICE</u>	<u>TOTAL AMT.</u>
1.0.	Excavation	185,000 (Est)	c.y.	\$-----	\$-----
2.0.0	Fill From Off-Site				
2.1.1.	First 10,000 c.y.	10,000 (Est)	c.y.	\$-----	\$-----
2.1.2.	Over 10,000 c.y.	5,000 (Est)	c.y.	\$-----	\$-----

Note: Item 1 in the above schedule is an estimated quantity with undivided items that is subject to the FAR VEQ clause and item 2 is an estimated quantity with subdivided items that is subject to the EFARS VEQ Clause. Enclosed is a sample of the current version of the EFARS VEQ clause that would be included in the solicitation.

3. The EFARS clause has been widely used on USACE civil works projects involving such items as extensive excavation, and drilling and grouting. The EFARS clause rather than the standard FAR clause is utilized when it is not possible to reasonably estimate the quantity of work to be performed. Under the EFARS clause, the contractor is expected to distribute his fixed costs over the estimated quantity of the first sub-item since unit prices for quantities provided under the follow on sub-item(s) will not be adjusted in case of overrun or underrun. Small quantities for the follow on sub-items could encourage unbalancing of bids by inflating the bid unit prices for those follow on sub-items. If an overrun occurs, the Government will be committed to pay the contractor the inflated prices without any adjustment. Therefore, serious thought should be given to the selection of the proper VEQ clause that fits the situation.

4. In light of the recent guidance concerning payment for overruns under the FAR VEQ clause (see CB No. 96-21), it is suggested that the EFARS VEQ clause be used for estimated quantities of work where we have consistently exceeded the estimated quantity. Candidate projects would be "Yank-a-Tank" projects, and dredging contracts for which a reasonable estimate of the quantity of work cannot be determined at the time of bid. It should be noted that the EFARS clause refers back to the FAR VEQ clause. For this

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reason, when the EFARS VEQ clause is used, the contract must incorporate both VEQ clauses. It should also be noted that it is not unusual to have both subdivided and undivided items in the same contract.

5. A question that is frequently raised concerning the VEQ clauses is: When does the variation constitute a "cardinal change", i.e., a significant change that is considered beyond the general scope of the contract? There is no definite answer to this question. The Contracting Officer (CO) must make such a determination by considering factors such as the size of the change and whether it was within the contemplation of both parties when they entered into the contract, the time required, and the individual effort the contractor must put forth. Consideration should be given to the contractor's capability to perform the added work and the reasonableness of the contract unit price(s).

6. **IMPLEMENTATION.** Construction personnel shall be alert during Biddability, Constructability, Operability and Environmental (BCOE) reviews as to the proper use of the VEQ clauses. When the EFARS clause is used, attention should be given to the use of the current version and to the proper structure of the estimated quantities among the sub-items. When the full scope of work cannot be reasonably defined, fixed price contracts with estimated quantities may not be appropriate and could lead to large and costly overruns. In these cases, alternative acquisition strategies should be examined such as cost reimbursement type contracts.

7. This CB has been coordinated with the following HQUSACE organizations: Office of the Chief Counsel (CECC-C) and (CECC-F); Office of the Principal Assistant Responsible for Contracting (CEPR-ZA); and Operations, Construction, and Readiness Division (CECW-OC).

Encl.

  
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## ENGINEER FAR SUPPLEMENT(EFARS)

### PART 52 — SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### SUBPART 52.1 — INSTRUCTIONS FOR USING PROVISIONS AND CLAUSES

##### 52.101 Using Part 52.

(b)(2)(ii)(B) In accordance with AFARS policy, the sequential number for EFARS clauses will be in the 5000 series.

##### 52.102-1 Incorporation by reference.

If solicitation provisions or contracts clauses are incorporated by reference, the reference must include the exact date of the provision or clause.

#### SUBPART 52.2 — TEXTS OF PROVISIONS AND CLAUSES

##### 52.211-5000 Evaluation of subdivided items.

As prescribed at 11.403(c), insert the following provision:

##### EVALUATION OF SUBDIVIDED ITEMS (MAR 1995) — EFARS

Item Nos. 2 are subdivided into two or more estimated quantities and are to be separately priced. The Government will evaluate each of these items on the basis of total price of its sub-items.

(End of provision)

##### 52.212-5001 Variations in estimated quantities — subdivided items.

As prescribed at 11.403(c), insert the following clause in solicitations and contracts for fixed-price construction contracts when subdivided items are to be separately priced for payment purposes.

##### VARIATIONS IN ESTIMATED QUANTITIES — SUBDIVIDED ITEMS (MAR 1995) — EFARS

This variation in estimated quantities clause is applicable only to Items Nos. 2.

(a) Variation from the estimated quantity in the actual work performed under any second or subsequent sub-item or elimination of all work under such a second or subsequent sub-item will not be the basis for an adjustment in contract unit price.

(b) Where the actual quantity of work performed for items Nos. 2 is less than 85% of the quantity of the first sub-item listed under such item, the contractor will be paid at the contract unit price for that sub-item for the actual quantity of work performed and, in addition, an equitable adjustment shall be made in accordance with the clause FAR 52.211-18, Variation in Estimated Quantities.

(c) If the actual quantity of work performed under Items Nos. 2 exceeds 115% or is less than 85% of the total estimated quantity of the sub-item under that item and/or if the quantity of the work performed under the second sub-item or any subsequent sub-item under Items Nos. 2 exceeds 115% or is less than 85% of the estimated quantity of any such sub-item, and if such variation causes an increase or a decrease in the time required for performance of this contract the contract completion time will be adjusted in accordance with the clause FAR 52.211-18, Variation in Estimated Quantities.

(End of clause)

##### 52.214-5000 Apparent clerical mistakes.

As prescribed at 14.406-2 insert the following statement in solicitation and contracts.

##### ARITHMETIC DISCREPANCIES

(a) For the purpose of initial evaluations of bids, the following will be utilized in the resolving arithmetic discrepancies found on the face of bidding schedule as submitted by the bidder:

(1) Obviously misplaced decimal points will be corrected;

(2) Discrepancy between unit price and extended price, the unit price will govern;

SAMPLE

Enclosure to CB No. 7

7 JAN 1997

\* Typing error will be corrected in upcoming revision